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**BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING**  
**OF THE DEPARTMENT OF COMMERCE**  
**OF THE STATE OF UTAH**

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IN THE MATTER OF THE ISSUANCE OF A PROBATIONARY LICENSE TO <b>BRIAN ERIC JOHNSTON</b> TO PRACTICE AS A CHIROPRACTIC PHYSICIAN IN THE STATE OF UTAH	) ) ) ) ) )	<b>MEMORANDUM OF</b> <b>UNDERSTANDING AND ORDER</b>  <b>CASE NO. DOPL 2013- 114</b>
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BRIAN ERIC JOHNSTON ("Respondent") submitted an application for renewal of licensure as a chiropractic physician in the State of Utah on or about January 4, 2013. On the Qualifying Questions Respondent answered "yes" to questions #1 and #2. Documentation has been received by the Division showing that Respondent pleaded guilty on or about June 5, 2012 to one count of impaired driving, a Class B misdemeanor, in the Ogden City Justice Court, Weber County, State of Utah. The Respondent failed to accurately provide "yes" answers to questions #1 and #2 on the application for renewal of licensure submitted on or about November 24, 2009, for the renewal/reinstatement of license cycle as of May 31, 2008. Respondent pleaded guilty on or about April 8, 2008 to one count of Alcohol/drug related reckless driving, a Class B misdemeanor, in Davis County Justice Court, Davis County, State of Utah. Respondent pleaded guilty on or about April 8, 2008 to one count of open container/drinking alcohol in vehicle, a Class C misdemeanor, in Davis County Justice Court, Davis County, State of Utah. None of the 2008 convictions were accurately reported to the Division at the time the renewal/reinstatement application was submitted via the Internet.

Based upon Respondent's plea of guilty and the failure to accurately provide prior information, Respondent and Division, as evidenced by their signatures on this Memorandum of Understanding and Order, agree that Respondent shall be issued a probationary license to practice as a chiropractic physician in the State of Utah, subject to the following terms and conditions, which shall be in effect for a period of two years, commencing upon the date this

Memorandum of Understanding and Order is approved by the Division Director as evidenced by his signature

- 1 Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (c) and unlawful conduct as defined in Utah Code Ann § 58-1-501(1)(e) Respondent admits that Respondent has engaged in conduct that resulted in Respondent pleading guilty to a criminal offense involving moral turpitude and/or a criminal offense reasonably related to Respondent's ability to safely and competently practice as a chiropractic physician Respondent understands that the issuance of the Order in this matter is disciplinary action against Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann § 58-1-401(2)
- 2 Respondent acknowledges that Respondent enters into this Memorandum of Understanding and Order knowingly and voluntarily, and other than what is contained in this Memorandum of Understanding and Order, no promise or threat whatsoever has been made by the Division, or any member, officer, agent or representative of the Division to induce Respondent to enter into this agreement
3. Respondent understands that Respondent has the right to be represented by an attorney in this matter, and the Respondent has either sought the advice of counsel or knowingly waives Respondent's right to counsel in this matter
- 4 Respondent acknowledges that this Memorandum of Understanding and Order, if adopted by the Director of the Division, will be classified as a public document The Division may release this Memorandum of Understanding and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities
- 5 Respondent shall successfully complete and satisfy the following terms and conditions
  - a Respondent shall meet with the Board as determined by the Board and Division for the duration of the Memorandum of Understanding and Order Respondent agrees to meet with an assigned staff member following the effective date of this Memorandum of Understanding and Order
  - b Respondent shall complete all terms and conditions of any criminal sanctions, incurred before or during the period of this agreement, including probation or parole. If Respondent has not successfully completed all the terms and conditions of Respondent's criminal probation, at the time Respondent's administrative probationary period ends, the period of Respondent's administrative probation shall be extended until all the conditions of Respondent's criminal probation have been successfully completed

- c Respondent shall submit to the Board and Division, within sixty (60) days of the effective date of this Memorandum of Understanding and Order, a four to five page essay on what was learned in completing the substance abuse education or treatment program in compliance with the criminal sanctions. In the interest of public safety, the Division may impose additional requirements above and beyond those recommended by the substance abuse education or treatment program administrators or coordinators set forth above. Respondent agrees to comply with these additional requirements.
- d Respondent shall successfully complete a continuing professional education course focusing on professional standards and ethics. The course shall be pre-approved by the Division and Board. The professional standards and ethics course shall be successfully completed within six months of the effective date of this Memorandum of Understanding and Order. The professional standards and ethics course shall not count toward Respondent's regular continuing education requirement.
- e *If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, Respondent agrees to cause the Division and Board to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.*
- f Respondent shall maintain an active license at all times during the period of this agreement.
- g Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.
- h Respondent shall notify the Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification is required regardless of whether Respondent is employed in Respondent's profession.
- i Respondent shall notify any employer or practice associate of Respondent's restricted status and the terms of this agreement.
- j Respondent shall notify any employer or practice associate of Respondent's restricted status and the terms of this agreement. Respondent shall further cause Respondent's employer or practice associate to submit performance evaluations to the Board on a monthly basis for six months and quarterly thereafter which shall include acknowledgement by Respondent's employer or practice associate that a copy of this Memorandum of Understanding and Order has been read by the

employer The receipt of an unfavorable report from an employer or practice associate may be considered to be a violation of the terms of this Memorandum of Understanding and Order If the Respondent is not employed as a Chiropractic Physician, Respondent shall submit the required employer report form to the Board on the date it is due and indicate on that form that Respondent is not currently employed in Respondent's licensed occupation or that Respondent is not currently working.

- k If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Memorandum of Understanding and Order Periods of residency or practice outside the State of Utah may apply to the reduction of the period this Memorandum of Understanding and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Memorandum of Understanding and Order
- l In the event Respondent does not practice as a chiropractic physician for a period of sixty (60) days or longer, Respondent shall notify the Board in writing of the date Respondent ceased practicing The period of time in which Respondent does not practice shall not be counted toward the time period of this Memorandum of Understanding and Order It shall be within the discretion of the Board to modify this requirement if Respondent satisfactorily explains to the Board that compliance in Respondent's case was impractical or unduly burdensome Respondent must work at least eight (8) hours per week and no more than forty-eight (48) hours per week to be considered "practicing" in Respondent's profession
- 6 Respondent agrees to abide by all applicable federal and state laws, regulations, rules or orders related to Respondent's licensed area of practice
- 7 Respondent understands that the issuance of a license pursuant to this Memorandum of Understanding and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative or judicial review of that partial denial of licensure
- 8 If Respondent successfully completes the terms of this Memorandum of Understanding and Order, the conditions on Respondent's license will be lifted and Respondent's license will not be subject to further restriction
- 9 If Respondent violates any term or condition of this Memorandum of Understanding and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction

- 10 The terms and conditions of this Memorandum of Understanding and Order become effective immediately upon the approval of this Memorandum of Understanding and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Memorandum of Understanding and Order immediately after the Division Director signs the Order page of this Memorandum of Understanding and Order. Respondent shall complete all the terms and conditions contained in the Memorandum of Understanding and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in this Memorandum of Understanding and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to complete a term or condition in a timely manner shall constitute a violation of the Memorandum of Understanding and Order and may subject Respondent to revocation or other sanctions.
- 11 This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements that modify, interpret, construe or affect this Memorandum of Understanding and Order.
- 12 If the Divisions files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Memorandum of Understanding and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved.
- 13 Respondent understands that the disciplinary action taken by the Division in this Memorandum of Understanding and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state.
- 14 Respondent has read each and every paragraph contained in this Memorandum of Understanding and Order. Respondent understands each and every paragraph contained in this Memorandum of Understanding and Order. Respondent has no questions about any paragraph or provision contained in this Memorandum of Understanding and Order.

DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING

RESPONDENT

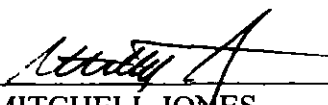
BY   
SALLY A STEWART  
Bureau Manager

BY   
BRIAN ERIC JOHNSTON

DATE 03/18/2013

DATE 2-27-13

MARK L SHURTLEFF  
ATTORNEY GENERAL

BY   
L MITCHELL JONES  
Counsel for the Division

DATE 18 Mar 13

**ORDER**

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **BRIAN ERIC JOHNSTON**, is hereby approved by the Division of Occupational and Professional Licensing. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Memorandum of Understanding are incorporated herein and constitute my final Order in this case.

DATED this 20<sup>th</sup> day of March, 2013

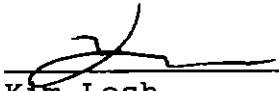
DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

  
MARK B. STEINAGEL  
Director

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20 day of March, 2013, a true and correct copy of the foregoing MEMORANDUM OF UNDERSTANDING AND ORDER has been served on the parties of record in this proceeding by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to the following:

Brian Eric Johnston  
3616 Iowa Avenue  
Ogden UT 84403

  
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Kim Lesh  
Administrative Secretary  
Division of Occupational  
and Professional  
Licensing